IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE
MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WA.No. 191 of 2007(E)

AGAINST THE JUDGEMENT/ORDER IN OP.27534/1999 Dated 30/03/2006
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APPELLANT: PETITIONER

MATHEW P.MATHEW AND ASSOCIATES,
REPRESENTED BY MATHEW P.MATHEW,
S/O.P.J.MATHEW, AGED 47 YEARS, PUKADIYIL HOUSE,
SASTRI ROAD, KOTTAYAM.

BY ADV. SRI.M.P.ABRAHAM (SR.)
SRI.ABEESH JOSE
SRI.JOSEPH THAMPAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT OF KERALA,
SECRETARIATE, THIRUVANANTHAPURAM.

2. THE TAHSILDAR, KOTTAYAM.

3. THE VILLAGE OFFICER,
MUTTAMBALAM.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SRI. MATHEW G. VADAKKEL.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN(AG.C.J.) & M.N. KRISHNAN,J.

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W.A. NO. 191 OF 2007

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Dated this the 9th day of February, 2007.

J U D G M E N T

Radhakrishnan,(Ag.C.J.)

The writ petition was preferred by the appellant seeking to issue a writ of certiorari to quash Exts.P5, P6 and P7 and also for a direction to respondents to assess each part or each flat separately as against 20 respective owners and to recover property tax accordingly. Exts.P5 and P6 assessment orders were passed by the Tahsildar, Kottayam on 19/9/99. By the assessment order the Tahsildar has assessed the building as a single unit in the name of the appellant. The said order was passed by the Tahsildar after hearing the appellant as well. As per Section 2 explanation 2 of the Kerala Building Tax Act and Rules, where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. The appellant has not produced any documents to prove the above claim. Only copies of unregistered documents were submitted to prove that the local

authority had granted permission to construct building to the appellant. The documents produced were not sufficient to hold the flats as separate unit as per the Kerala Building Tax Act. Learned Single Judge dismissed the original petition due to lack of evidence and it is against that finding this writ appeal has been preferred.

2. We notice that Ext.P5 order has been issued under Section 9 of the Kerala Building Tax Act. Petitioner has remedy under Section 11 of the Building Tax Act to file an appeal before the Appellate Authority. Learned counsel for the appellant also submits that he may be permitted to move the Appellate Authority. Appellant may avail of the appellate remedy if law permits and the time spent for litigating this matter before this Court, may be taken note of by the appellate authority while considering the application for condonation of delay. The appeal lacks merit and the same is dismissed.

K.S. RADHAKRISHNAN,
(AG. CHIEF JUSTICE).

M.N. KRISHNAN, JUDGE.

ul/-